



1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3
4
5 NANCY KANE

6 Plaintiff,

7
8 v.

9 CITY OF ITHACA,

10 Defendant

) Civil Action No.3:18-CV-074

) TJM/DEP

) Jury Trial Demanded

) Complaint
)
)

11
12 **COMPLAINT**

13
14 Plaintiff alleges, upon personal knowledge as to herself
15 and upon information and belief as to others:

16 **NATURE OF THE ACTION**

17 1. This is an action brought for:

18 a. violation of the Americans with Disabilities Act
19 (ADA);

20
21 b. unsafe work conditions in violation of PESH/OSHA
22 standards;

23 c. wrong termination in violation of public policy;

24 d. gender discrimination (Title VII);

25 e. breach of contract; and
26
27
28

Complaint

1 **THE PARTIES**

- 2 2. Plaintiff NANCY KANE is a resident of the County of
3 Tompkins, State of New York.
- 4 3. Upon information and belief, Defendant City of Ithaca,
5 is located at 108 E. Green Street, Ithaca, NY 14850.

6 **JURISDICTION AND VENUE**

- 7 4. The court has jurisdiction over this action because
8 the complaint involves issues of federal law.
- 9 5. The United States District Court, Northern District is
10 the proper venue for this action because the actions
11 that violated plaintiffs' rights occurred within
12 Tompkins County, within the boundaries of this
13 District.
14 District.

15 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

- 16 6. On or about May 16, 2016 Plaintiff began working for
17 Defendant as a Recreation Program Coordinator.
- 18 7. On or about October 28, 2016, Plaintiff was terminated
19 by Defendant.
- 20 8. On or about June 23, 2017, Plaintiff received a right
21 to sue letter from the Equal Employment Opportunity
22 Commission (copy annexed hereto as Exhibit A).
- 23 9. On or about September 19, 2017 Plaintiff filed a
24 complaint with the New York State Supreme Court Sixth
25 Judicial District - Tompkins County.
26 Judicial District - Tompkins County.
27 Judicial District - Tompkins County.
28 Judicial District - Tompkins County.

Complaint

1
2 10. On or about January 17, 2018, the court removed the
3 case to the United States District Court for the
4 Northern District of New York because plaintiff's
5 claims involves claims for violations of federal
6 statutes.

7
8 **FIRST CAUSE OF ACTION - VIOLATION OF ADA**

9 11. Plaintiff restates the claims made in paragraphs 1
10 through 10 of this Complaint as if restated here in
11 full.

12 12. On or about October 25, 2016, at the Ithaca Youth
13 Bureau (IYB) Plaintiff presented Defendant with
14 documentation of a life-threatening disability (sleep
15 apnea) requiring accommodations.
16

17 13. In response, Defendant told Plaintiff that a meeting
18 would be held on Friday, October 28, to discuss
19 performance issues.
20

21 14. Plaintiff requested union representation for the
22 meeting, and asked that her request for accommodation
23 be discussed.

24 15. Defendant refused both to discuss her request for
25 accommodation and her request for union
26 representation, calling her requests contentious.
27

28 16. After being subjected to open hostility from Defendant

Complaint

1 on that date, Plaintiff went to her sleep specialist
2 later that day, and provided Defendant with a letter
3 from that physician. Other than acknowledging receipt
4 of said letter, Defendant never met with Plaintiff to
5 discuss her request for accommodations for her
6 disability, or took any steps with regard to said
7 request.
8
9

10 17. By its failure to even engage into any discussion of
11 accommodations for her disability, or consider any
12 such accommodations, Defendant breached the ADA.

13 18. Plaintiff was terminated by Defendant on October 28,
14 2016, only 3 days after making a claim for disability.

15 19. Plaintiff's termination was an adverse employment
16 action, and was both discriminatory and retaliatory,
17 in violation of Title VII and the ADA.
18
19

20 **SECOND CAUSE OF ACTION - BREACH OF PESH/OSHA STANDARDS**

21 20. Plaintiff restates the claims made in paragraphs 1
22 through 10 of this Complaint as if restated here in
23 full.

24 21. At her own expense, Plaintiff KANE undertook Red Cross
25 safety training in Lifeguarding, First Aid/CPR, and
26 Responding to Emergencies. She was trained in proper
27 procedure for removal of hypodermic syringes.
28

Complaint

1 A hypodermic needle was found by a parent on a soccer
2 field on or about September 18, 2016. Plaintiff
3 disposed of this pursuant to her training, although no
4 sharps containers or other facilities for such
5 disposal was provided by Defendant. When she
6 informed Defendant, she was told that she should have
7 put it in an empty plastic bottle, and brought it to
8 her home.
9

10
11 22. On September 25, 2016, a steel drum being used by park
12 dog walkers for garbage disposal by Cass Park next to
13 Cass Park bathroom shed was overflowing with dog
14 waste, food, standing water, and trash. The next day,
15 Plaintiff informed Defendant of this, and of the
16 potential health hazard. In response, Plaintiff was
17 told that her duties included emptying trash and
18 maintenance of rest rooms (including restroom
19 blockages and overflowing plumbing issues). Plaintiff
20 had never been told this previously.
21

22
23 23. Plaintiff was told that maintenance of the park for
24 trash was part of her responsibilities, or to order
25 the soccer officials at the park (minors employed by
26 Defendant) to clean the trash. She specifically asked
27 for training to cope with broken glass, dead animals,
28

1 insect and/or spider infestation, human waste
2 products, and used condoms - all of which were
3 problems at the park. When she complained, she was
4 told that Defendant would send someone to help with
5 the trash, but that was never done.
6

7
8 24. Despite her request, Plaintiff was never provided with
9 any training with regard to any of these issues by
10 Defendant, although she undertook Red Cross safety
11 training in Lifeguarding, First Aid/CPR, and
12 Responding to Emergencies, including proper procedure
13 for removal of hypodermic syringes, at her own
14 expense. Defendant subsequently requested additional
15 training from the City Safety and Health Officer,
16 which was not provided.
17

18 25. According to the New York State Department of Labor
19 Safety and Health division fact sheet on Employee
20 Rights and Responsibilities under the New York State
21 Public Employee Safety and Health Act, an employee
22 must follow the OSHA safety and health standards and
23 any other regulations that apply to their own actions
24 and conduct on the job.
25

26
27 26. Defendant's failure to provide Plaintiff any training
28 or assistance effectively prevented her from being

Complaint

1 able to follow New York State's Public Employee
2 Occupational Safety and Health Act of 1980, which
3 covers all public employees at the State and local
4 levels. City of Ithaca HR personnel and Safety and
5 Health officer did not ensure that proper safety
6 procedures were implemented and followed, even after
7 having been made aware of the problems.

8
9 27. According to NYS 1910.1030(e)(2)(ii)(M), "A biosafety
10 manual shall be prepared and periodically reviewed and
11 updated at least annually or more often if necessary.
12 Personnel shall be advised of potential hazards, shall
13 be required to read instructions on practices and
14 procedures, and shall be required to follow them."

15
16 28. Also, from NYS 1910.1030(g)(2)(i), "The employer shall
17 train each employee with occupational exposure in
18 accordance with the requirements of this section.
19 Such training must be provided at no cost to the
20 employee and during working hours. The employer shall
21 institute a training program and ensure employee
22 participation in the program." Plaintiff was made to
23 take Red Cross Responding to Emergencies training at
24 her own expense outside of working hours. The course
25 (and a First Aid course also paid for by KANE) did not
26
27
28

1 cover biohazard removal beyond hypodermic needles and
2 blood spills.

3 29. In response to her requests for training and
4 assistance, Defendant told Plaintiff that she was
5 unable to intuit her job requirements after being on
6 the job for several months, and that she could not be
7 trusted.
8

9 30. On or about October 28, 2016, in response to a
10 request, Plaintiff submitted a purchase request for a
11 rolling trash bin and other waste disposal equipment.
12 That day, after making said request, Plaintiff was
13 terminated.
14

15 31. Plaintiff believes that her firing was, in part,
16 retaliation for her having sought proper training and
17 equipment to complete a part of her job as assigned
18 by her supervisor. Her right to a safe workplace
19 under OSHA and PESH were violated.
20

21 **THIRD CAUSE OF ACTION - WRONGFUL TERMINATION IN BREACH OF**
22 **PUBLIC POLICY**
23

24 32. While working as the supervisor of the Cheerleading
25 program, requirements that music used in cheer
26 performances be legally licensed were being reiterated
27 nationwide by USA Cheer in the wake of the
28

1 cheerleading music lawsuit, Sony Music Entertainment
2 v. Extreme Traxx Productions et al(1:14-cv-00817), and
3 the YFL (Youth Football League, of which Cheerleading
4 was a part) competition would not allow any team to
5 compete with unlicensed music (proof of license was
6 required for competition registration). Plaintiff
7 informed Defendant of the requirements and explained
8 that the cheer squad would not be allowed to
9 participate in the league competition without legal
10 licensing.
11

12
13 33. Defendant dismissed her concerns, saying that music
14 was always used throughout the recreation program
15 without licensing and that nobody ever complained or
16 got caught. Defendant recommended that she not pay
17 for said licensing.
18

19 34. Plaintiff did pay for said licensing, as was required.

20 35. Defendant has claimed that a reason for her
21 termination was her paying for said licensing.
22

23 36. Not obtaining a performance license would be in
24 violation of Federal Law (The 1976 Copyright Act),
25 which would have exposed the City of Ithaca to
26 liability and the potential for fines up to \$150,000
27 for each occurrence of using music for which the City
28

1 of Ithaca did not have the rights.

2 37. Plaintiff claims damages.

3 **FOURTH CAUSE OF ACTION - GENDER DISCRIMINATION**

4 38. Plaintiff restates the claims in paragraphs 1 through
5 10 as if restated here in full.

6
7 39. On or about July 26, 2016, Plaintiff was told that she
8 would not given responsibility for working on the
9 football league as part of her job, because she is a
10 woman, and the other football league directors would
11 not respect her.

12
13 40. Although not happy, Plaintiff agreed to work with the
14 cheerleaders instead.

15 41. In early September, an issue arose at a football game
16 involving the Cheer squad and an audience member.
17 Plaintiff went immediately to the field to assess the
18 situation and was collecting information from
19 eyewitnesses. Jonathan Nixon a referee, refused to
20 speak with her regarding the incident, and was
21 verbally abusive and disrespectful to her.

22
23 42. Plaintiff filed a complaint with Michael Blakely-
24 Armitage against Nixon as a result. Upon information
25 and belief, no action was taken and no reprimand was
26 issued; her complaint was ignored.
27
28

1 43. On September 27, 2016, Plaintiff met with John Oakley,
2 longtime director of the IYB soccer program, as part
3 of her supervisory duties, and told him of the above-
4 reference requirement that she be responsible for the
5 cleaning at Cass Park soccer practice fields. Oakley
6 said no male had ever been told to do that, and none
7 had ever done it. He suggested KANE's gender was
8 likely the reason she was expected to clean.
9

10 44. Upon information and belief, females are subjected to
11 scrutiny and harassment from their supervisors not
12 given to similarly situated male employees.
13

14 45. Plaintiff claims damages.
15

16 **FIFTH CAUSE OF ACTION - BREACH OF CONTRACT**

17 46. Plaintiff restates the claims in paragraphs 1 through
18 10 as if restated here in full.

19 47. Although New York state is an at-will employment
20 state, it recognizes employment contracts based upon
21 oral promises supported by documentation or statements
22 in the employee handbook - see Rules for the
23 Administration of the Civil Services Law in the City
24 of Ithaca (effective May 1, 2008).
25

26 48. Defendant violated its own due process for
27 termination, ignoring Rule XIV, item 5 of the
28

1 Probationary Term, which states "The appointing
2 authority and supervisor of a probationer will
3 carefully evaluate the probationer's work performance
4 of the duties and responsibilities of the position. A
5 probationer whose services are to be terminated for
6 unsatisfactory service shall be given written notice
7 prior to such termination and, upon request, shall be
8 granted an interview with the appointing authority or
9 his/her representatives. (p. 16, Rules for the
10 Administration of the Civil Service Law in the City of
11 Ithaca, May 1, 2008)".

14 49. Plaintiff received no written notification of
15 unsatisfactory service.

16 50. Plaintiff reasonably relied on said language to her
17 detriment, and claims damages.

19 **STATEMENT OF RELIEF SOUGHT**

20 In all the above causes of action, Plaintiff claims lost
21 wages, loss of employment, punitive damages, attorney's
22 fees, and such other and further relief as the court may
23 deem just and proper. Plaintiff demands a trial by jury.
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1
2 State of New York
3 County of Tompkins

4 The foregoing instrument was acknowledged
5 before me this 27th day of FEBRUARY
6 2018, by NANCY KANE
7 Personally known to me or produced
8 NYDL as Identification.
9 Signature Kevin J. McGinn

Dated this 27th of February,
2018

7 KEVIN J MCGINN
8 NOTARY PUBLIC-STATE OF NEW YORK
9 No. 01MC8367120
10 Qualified in Tompkins County
11 My Commission Expires 11-13-2021

Nancy Kane
Nancy Kane, Plaintiff

12 **Attachments:**

13 Exhibit A: Right to sue letter from the Equal Employment
14 Opportunity Commission
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Complaint